

(2013) 09 GUJ CK 0007
In the Gujarat High Court
Case No : SCA No. 7017 of 2013

Samir Diamond Manufacturing Pvt. Ltd.	APPELLANT
Vs	
Assistant Commissioner, Employees" Provident Fund and Another	RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2013) 139 FLR 1094 : (2014) LabIC 93 : (2013) 5 LLN 581 : (2013) LLR 1190

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : Harmish K. Shah, for the Appellant; Joy Mathew, for the Respondent

Judgement

Paresh Upadhyay, J.—Heard Mr. H.K. Shah, learned advocate for the petitioner Company and Mr. Joy. Mathew, learned advocate for the respondent authorities. Challenge in this petition is made to the order passed by the Assistant Provident Fund Commissioner, Regional Office, Surat, dated 20.3.2012, in exercise of powers u/s 7A of the Employees" Provident Fund and Miscellaneous Provisions Act, 1952. The said order is, inter alia, based on a report of the Enforcement Officer, which was on record.

2. Learned advocate for the petitioner company has submitted that apart from the fact that on merits, no payment is required to be made, even the report of the Enforcement Officer, which was the base for passing the impugned order, was also not supplied to the petitioner. It is further contended that even this was specifically agitated by filing Review before the appropriate forum, and while rejecting the Review, u/s 7B of the Act, vide order dated 28.1.2013, even this aspect is not taken into consideration by the Authorities.

3. On behalf of the respondent Authorities, affidavit-in-reply is filed mainly contending therein that, in view of provisions of Section 7I of the Act, the petitioner needs to exhaust the statutory remedy of approaching the Tribunal.

4. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds that the petitioner is right in his contention that the order u/s 7A was passed in violation of principles of natural justice, since the report of the Enforcement Officer, which was the base of the impugned order passed u/s 7A, was not supplied to the petitioner. It is not in dispute that the copy thereof was not given to the petitioner. Explanation is given that the representative of the petitioner was shown the said report during hearing, which is disputed by the petitioner. In my view, the copy of the report ought to have been given to the petitioner. If any order passed by a statutory Authority is based on any report, a party to proceedings has a right to have copy thereof. Thus, non-supply of copy of such a report is in violation of principles of natural justice and the Authorities cannot be permitted to advance an argument of alternate remedy in such gross facts,

5.1 There cannot be any dispute with regard to proposition of law that, when statutory alternative remedy is available, the Court would be slow to exercise powers under Article 226 of the Constitution of India, however, when the Court finds that the Authority has not committed simple error of judgment, but has acted high-handedly and the action also tacks bona fide, asking a citizen to go before the Tribunal and deposit money before it as condition precedent, would only endorse the pressure tactics, for which the Authorities of Provident Fund Department of Surat and Baroda Regional Offices are known for. Under these circumstances, I am inclined to exercise discretion under Article 226 of the Constitution of India in the facts of this case. Reference can be made to the judgment and order of this Court dated 23.7.2013 passed in Special Civil Application No. 10628 of 2013, wherein the Assistant Provided Fund Commissioner, Surat, had challenged the order of the Tribunal setting aside the order u/s 7A inter alia on the ground that report of the Enforcement Officer was not supplied. Para 12 of the order of the Tribunal in its order 30.1.2013 in ATA No. 397(5)2011, which was impugned in Special Civil Application No. 10628 of 2013, reads as under.

12. Another contention of the appellant is that the Commissioner had based the impugned order on the report submitted by the Enforcement Offices. A copy of the said report of Enforcement Officer was neither supply to nor shown to the appellant to contest the same by the appellant. The appellant also contended that the Commissioner has not disclosed the documents which he relied on for calculating the provident fund contributions in addition to the monthly provident fund contributions remitted by the appellant. In this regard, attention is drawn to the case of Small Gauges Ltd. and Others Vs. V.P. Ramaiah, Regional Provident Fund Commissioner, the Hon''ble High Court of Bombay held that.... In view of the above judgment, it is the legal duty of the Commissioner to supply the copy of the report and all such document on which the respondent relied on. However, while going through the impugned order it is evident that the respondent has not supplied the Enforcement Officer''s report to the appellant which causes gross injustice to the appellant.

5.2 This Court had uphold the above reasoning of the Tribunal. Under these circumstances, to ask the present petitioner to go before the Tribunal, would endorse and encourage the arm twisting tactics which is going on particularly in Regional Provident Fund Office at Surat, with which even the Central Provident Fund Commissioner, Delhi, must also be aware of, in view of the direction given by this Court in Special Civil Application No. 10357 of 2013, vide judgment and order dated 23.7.2013.

For the reasons recorded above, this petition needs to be and is allowed: Order impugned in this petition dated 20.3.2012 passed by the Assistant Provident Fund Commissioner, Regional Officer, Surat, u/s 7A of the Act is quashed and set aside. Consequently, order passed u/s 7B of the Act dated 28.1.2013 would not survive. It is clarified that this Court has not gone into the merits of the matter and it would be open for the Authorities to pass fresh order in exercise of power u/s 7A of the Act, after giving copies of the material, based on which it proposes to pass order and after following due procedure in accordance with law. Rule made absolute to the aforesaid extent. No costs.